



**GENERAL TERMS AND CONDITIONS FOR COLLECTORS OF THE NFSCo CIC**

**1 DEFINITIONS AND INTERPRETATION**

1.1 In these Conditions, unless the context otherwise requires, the following terms shall have the following meanings:

**“Approved Person”** means a person operating any Premises or vehicles for the storage, processing, treatment, disposal or use of Fallen Stock, such person and Premises and any relevant equipment having been approved in advance in writing by a Competent Authority for that purpose in accordance with the UK Regulations applicable to that person and the Community Regulations and those approvals being and remaining in full force and effect;

**“Area”** means the geographical area (delineated by postcodes) within which the Collector and the Company agree that the Collector shall provide the Services;

**“Auditor”** means in respect of England, the Comptroller and Auditor General or the Auditor General for Wales or the Comptroller and Auditor General for Northern Ireland or the Auditor General for Scotland as appropriate;

**“Award Letter”** means the letter sent by the Company to the Collector upon the Collector successfully becoming a provider of the Services at the Charges pursuant to the Scheme operated by the Company for and on behalf of its Members;

**“Biosecurity Conditions”** means the conditions issued or amended by the Company from time to time, the current conditions at the date of this Contract (NFSCo CIC Biosecurity Conditions

March 2015) are available at [www.nfscoco.uk](http://www.nfscoco.uk);

**“business day”** means any day, Monday to Friday, when the clearing banks are open for business in England;

**“Charges”** means the amounts referred to in Condition 5.1 applicable from time to time which include all of the Collector’s costs, fees, charges and expenses reasonably and properly incurred by the Collector in connection with the performance of the Services and in discharging its obligations under the Contract as agreed with the Company from time to time;

**“Collector”** means the person, company or organisation (including, where the context so admits, its employees, agents, contractors and sub-contractors) appointed by the Company under these Conditions in order to perform the Services in the relevant Area;

**“Community Regulations”** means Regulation (EC) No. 1069/2009 of the European Parliament and of the Council of 3<sup>rd</sup> October 2002 laying down health rules concerning animal by-products and derived products not intended for human consumption, as amended by and read with Commission Regulation (EC) No. 808/2003; Commission Regulation (EC) No 811/2003; Commission Regulation (EC) No. 813/2003; Commission Decision 2003/321/EC; Commission Decision 2003/321/EC; Commission Decision 2003/326/EC; and Commission Decision 2003/327/EC and as implemented by Commission Regulation (EU) No.142/2011;

**“Company”** means the NFSCo CIC (Company Number: 5027082), whose registered office is at c/o Saffery Champness, Unex House, Bourges Boulevard, Peterborough PE1 1NG;

**“Competent Authority”** means any competent authority exercising its

powers under such UK Regulations as are applicable to that authority or any person authorised to act on its behalf in connection therewith and includes but is not limited to DEFRA, the National Assembly for Wales, the Northern Ireland Assembly (DARDNI) and the Scottish Executive and such persons as are authorised to act on their behalf;

**“Conditions”** means the terms and conditions set out herein;

**“Contract”** means the terms of the agreement, into which these Conditions are incorporated and of which they form part, entered into between the Parties including any relevant terms set out in the Award Letter;

**“Contract Term”** the term of appointment of the Collector under the Scheme, subject to the provisions of Condition 10;

**“DEFRA”** means the Secretary of State for Environment, Food and Rural Affairs acting through the Department for Environment, Food and Rural Affairs and any persons authorised to act on the Secretary of State’s behalf;

**“Fallen Stock”** means animals which were killed (euthanasia with or without definite diagnosis) or have died (including stillborn and unborn animals) on farm and which were not slaughtered for human consumption. This includes animals killed by routine culling as part of normal production arrangements, where no government support is applied and animals lost during events that would ordinarily be covered by existing insurance arrangements e.g. fires and road accidents, providing at all times the member accepts liability for the collection and disposal;

**“Farmers”** means any livestock farmer operating anywhere in the United Kingdom;

**“Good Industry Practice”** means the exercise of that degree of skill, care, diligence, prudence, foresight and operating practice that would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking as that of the Collector under the same or similar circumstances;

**“Insolvency Event”** - in relation to the Collector, means any one or more of the following:

- (a) a resolution having been passed by the Collector’s directors to seek a winding up order or a petition for a winding up order having been presented against the Collector which has not been dismissed or withdrawn within seven (7) days of its presentation, or any analogous action is taken in a jurisdiction other than England and Wales; or
- (b) a resolution having been proposed to appoint an administrator, or to apply to court for an administration order, or an application for an administration order having been lodged with the Court in respect of the Collector or any step is taken pursuant to the Insolvency Act 1986, Schedule B1 and/or the Insolvency Rules 1986 to appoint an administrator out of court or the Collector enters administration, or any analogous action that is taken in a jurisdiction other than England and Wales; or
- (c) a receiver, administrative receiver, receiver and manager, court appointed receiver, interim receiver, custodian, sequestrator or similar officer is appointed in respect of the Collector or an encumbrancer takes steps to enforce or enforces its security over any part of the Collector’s assets, or any analogous action that is taken in a jurisdiction

other than England and Wales; or

- (d) the Collector enters into a voluntary arrangement or meetings are convened for consideration of a proposal for a voluntary arrangement under the Insolvency Act 1986, or any analogous action is taken in a jurisdiction other than England and Wales;
- (e) the Collector (being an individual) has a bankruptcy order made against him or her or makes an individual voluntary arrangement with his or her creditors or applies for an interim order (within the meaning of the Insolvency Act 1986) or enters into any composition or arrangement with his or her creditors generally; or
- (f) where the Collector is resident in the United Kingdom it is unable to pay or has no reasonable prospect of being able to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, but disregarding references in the Insolvency Act 1986 to proving this inability to the court’s satisfaction, or any analogous event occurs in a jurisdiction other than England and Wales;

**“Law”** means any applicable law, statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, guidance, decision or rule of court or delegated or subordinate legislation, including (without limitation) legislation of the European Union having the force of law in England and Wales and other parts of the United Kingdom without further enactment and including the treaty of Rome and (for the avoidance of doubt) the UK Regulations and the Community Regulations;

**“Month”** means any calendar month and corresponding terms shall be construed accordingly;

**“Member”** means any Farmer who is both registered and accepted as an active and paid up Member of the Scheme from time to time;

**“Party”** means either of the Company and/or the Collector (and, solely for the purposes of Conditions 5.6 and 12, the Member);

**“Premises”** means any premises permitted to be used by the Collector under this Contract in connection with the provision of the Services;

**“Scheme”** means the scheme established and run by the Company in order to assist Farmers in their compliance with the Community Regulations and the UK Regulations, under the terms of which the Company facilitates a system whereby any Member may arrange with a Collector to collect and dispose of that Member’s Fallen Stock;

**“Services”** means:

- (a) the collection, transportation, storage, handling, processing and disposal in accordance with Law by or on behalf of the Collector of those categories of Fallen Stock that the Collector has agreed to collect, transport, handle, process and dispose of, as agreed with a Member direct, and as communicated by the Collector to the Company and confirmed in writing by the Company to the Collector; and
- (b) any arrangements made by or on behalf of the Collector in connection with any of those activities; on the terms provided in Condition 3 and in each case solely in connection with this Contract and the Scheme.

**“Special Fees”** means separate fees payable to the Collector by a Member where the Collector and the Member agree special arrangements in relation to the collection of Fallen Stock, which fall outside the Scheme. Subject as otherwise set out in these Conditions, Special Fees will be treated for the

purposes of this Contract as if they were Charges and the relevant provisions of these Conditions will apply accordingly; “Termination Date” means the date on which the Collector’s appointment to provide Services may terminate in accordance with the terms of Condition 10;

“UK Regulations” means:

- (a) (in England) the Animal By-Products (Enforcement) (England) Regulations 2011 (SI 2011/881)
- (b) (in Scotland) the Animal By-Products (Enforcement) (Scotland) Regulations 2011 (Scottish SI 2011/171);
- (c) (in Wales) the Animal By-Products (Wales) (Enforcement) (No.2) Regulations 2011 (Welsh SI 2011/ 2377); and
- (d) (in Northern Ireland) the Animal By-Products (Enforcement) Regulations (Northern Ireland) 2011 (Statutory Rule 2011/124) and the Animal By-Products (Enforcement) (Amendment) Regulations (Northern Ireland) 2011 (Statutory Rule 2011/258);

“United Kingdom” means mainland England, Northern Ireland, Scotland, Wales and includes the Scottish Islands and Highlands.

“VAT” means value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto or in any primary or secondary legislation promulgated by the European Union or any official body or agency of the European Union and any similar sales, consumption or turnover tax replacing or introduced in addition to the foregoing.

1.2 In these Conditions, unless the context otherwise requires:

- (a) any reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any change, extension, consolidation or re-enactment and includes any

subordinate legislation for the time being in force made under it;

- (b) reference to the plural shall include the singular and vice versa and reference to one gender includes reference to all genders; and
- (c) any reference to a person shall be to a legal person of whatever kind whether incorporated or unincorporated and shall include a reference to that person’s successors, permitted transferees and assigns and any person with whom they may at any time amalgamate.

1.3 If the Company do not enforce any of its rights under these Conditions or if there is a delay in enforcing them, it does not prevent the Company from taking any action to enforce its rights in the future

1.4 These Conditions are issued 30<sup>th</sup> April 2012. They are effective in accordance with the provisions of Condition 10.12 for existing Collectors and immediately for new Collectors.

1.5 Each of these Conditions is separate from all other Conditions so that if one Condition is found to be void or otherwise unenforceable it will not affect the validity of any of the other Conditions.

## 2 WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

2.1 Except to the extent that Condition 2.2 applies, the Collector warrants and represents to the Company that the Collector has and shall continue to have throughout the Contract Term, all necessary consents, licences and approvals in connection with its entry into and performance of its obligations under the Contract.

2.2 If the Collector proposes to operate Premises under the Scheme or in connection with the provision of any of the Services but has not yet received specific approval to do so from a Competent Authority, it must provide details of its application to its local Animal Health Divisional Office or other Competent Authority for such approval.

Pending approval, it may operate the Premises under the Scheme but in the event that specific approval is subsequently refused, the Premises will be removed from the Scheme and the provision of any Services hereunder and may not be used under the Contract.

2.3 Throughout the Contract Term the Collector warrants and undertakes that:

- (a) it shall either:
  - (i) obtain, uphold and maintain all consents, licences and approvals required to operate any of the Premises necessary for the performance of the Services (subject to Condition 2.2); or
  - (ii) (where the Collector is not operating or proposing to operate any Premises in connection with the Services) ensure that it is able to provide all the necessary facilities, materials and any other equipment and personnel of appropriate qualifications and experience to undertake the Services, (which may be by provision of the services of an Approved Person);

on the terms communicated by the Collector to the Company and confirmed in writing by the Company to the Collector;

- (b) without limitation to Condition 2.1, it shall comply with such provisions of the Community Regulations and the UK Regulations applicable to the Collector as are relevant to the provision of any element of the Services (including, without limitation, the provisions of Article 7 and Annex II of the Community Regulations and Law from time to time relating

- to roadworthiness of vehicles); and
- (c) without limitation to Condition 2.1, it shall comply with such guidance applicable to the Scheme, which may be issued by a Competent Authority from time to time and including (without limitation), the Biosecurity Conditions;
- (d) it shall maintain on-line data entry capability;
- (e) it shall maintain such insurance cover as would normally be maintained by a reputable contractor in accordance with Good Industry Practice in the Fallen Stock collection industry including (without limitation) public liability insurance in the sum of not less than £1,000,000 (one million pounds) per claim and shall from time to time produce to the Company, on request, such reasonable evidence as the Company may require that such insurances are in effect and that the premiums are paid up to date.
- 2.4 The Collector shall at all times be responsible for the actions and omissions of its employees, agents, contractors and sub-contractors and any Approved Person with whom it engages at any time as if they were its own.
- 2.5 Throughout the Contract Term, the Collector warrants that it shall perform the Services at all times with all reasonable skill, care, diligence, following Good Industry Practice and in accordance with the Law as in force from time to time.
- 2.6 Without prejudice to the generality of Condition 2.1, all personnel deployed by or on behalf of the Collector in connection with the Services shall have appropriate qualifications and competence, be suitably fit and healthy to carry out the Services, be properly managed and supervised at all times and in these and any other respects be acceptable to the Company. If the Company gives the Collector notice that
- in the Company's reasonable opinion any person should be removed from involvement in the Services, the Collector shall take immediate steps to comply with such notice. The decision of the Company regarding the Collector's personnel shall be final and conclusive.
- 2.7 Throughout the Contract Term, the Collector shall not in any way misuse, abuse or defraud the Scheme, any Member, and/or the Company in connection with the operation of the Scheme.
- 2.8 The Company reserves the right to make such investigations as it sees fit regarding the financial probity of any Collector before accepting the Collector's tariffs under the Scheme.
- 2.9 The Company reserves the right to refuse to award a Contract under the Scheme to any Collector where in the Company's opinion such Collector has failed to perform in accordance with Good Industry Practice and/or in accordance with the Conditions.
- 2.10 The Collector is responsible for notifying the Company of changes to its trading name, address or if there are any other changes relevant to the Services provided hereunder. If the Company is not advised of changes to a Collector's contact details the Company may make a charge for any work undertaken by it in tracing the Collector.
- 2.11 Online instructions from Collectors as to their bank details will be accepted by the Company. However, the accuracy of this information will remain the responsibility of the Collector. The Company will not be liable in any circumstances if funds are transmitted to details of account holders supplied by the Collector.
- 2.12 The Company will not accept any instructions made via email which do not relate to the Services or which require the Company to act at a specified time or value. It is the responsibility of the Collector to ensure confidential information is not revealed in emails.
- 2.13 The Company reserves the right to suspend a Collector who, in their opinion, brings the collection and disposal industry into disrepute whilst an
- official investigation by the Competent Authority takes place, whether or not directly related to the provision of Services hereunder. If the Collector is subsequently found to be guilty of any offence or wrongdoing the Company reserves the right to terminate the Contract with the Collector who will no longer be entitled nor shall they supply Services under or in connection with the Scheme. This Condition includes breaches of any Law and covers any disposal or collection made by the Collector irrespective of whether that collection or offence was booked through the Scheme.
- 3 PROVISION OF THE SERVICES**
- 3.1 Upon being contacted by a Member within the Collector's Area to collect and dispose of the Member's Fallen Stock, the Collector shall:
- (a) make direct arrangements with the Member for the collection of the Member's Fallen Stock within 48 (forty-eight) hours of the Collector being so contacted or where this is not possible, such other period as the Member and the Collector may jointly agree; and
- (b) record the date and time of the Member's call and the due date and time of collection of the Member's Fallen Stock and the quantity of each category of Fallen Stock to be collected.
- 3.2 On collection of any Fallen Stock from any Member under the Scheme, the Collector shall provide the Member with a receipt for that collection (such receipt to be in a format prescribed by the Company), giving the date and time of collection, details of the Collector's registration number and the type and quantity of each category of Fallen Stock collected. The Collector shall ensure that it signs and dates any such receipt at the time of collection and shall use its best endeavours to ensure that (subject to Condition 3.3) the receipt is countersigned by the Member at that time.
- 3.3 The Member will only countersign a receipt when the Member and the

- Collector have agreed that the Services have been properly performed on that occasion. If there is a dispute between the Member and the Collector, which cannot be resolved by them within 5 days after the provision of the Services, to which it relates, such dispute will in the first place be referred to the Company, which shall be entitled to request copies of all relevant documentation. The Company's decision on such a dispute, acting reasonably and fairly, will be final and binding on the Member, the Collector and the Company.
- 3.4 The Collector must keep records of all receipts issued and records of where all Fallen Stock collected by it was disposed of and the method of disposal for a period of six (6) years from the date of collection from the Member. The Collector shall ensure that those records shall be available for inspection by the Company under Conditions 4.3 and 3.11.
- 3.5 Unless otherwise agreed with the Company, the Collector must provide Services to any Member who resides in any part of the Area that the Collector has an agreed set of Charges with the Company, and in respect of which any such Member makes a request for the provision of such Services.
- 3.6 If Charges are tendered by a Collector for a specific Area but a Collector is unable to collect in that Area, the Company reserves the right to remove the relevant postcodes from the Area, or otherwise amend the Area, and/or suspend the Collector from the Scheme.
- 3.7 The attribution of an Area to a Collector shall not in any way prevent or restrict the Company from appointing another Collector or Collectors for that Area.
- 3.8 The Parties may from time to time agree to amend the Area and/or the categories of Fallen Stock in respect of which the Collector is providing the Services and any such amendment shall be recorded in writing.
- 3.9 The Collector shall be at liberty, by agreement with a Member, to charge Special Fees. The terms of the provision of any services attracting Special Fees shall be subject to agreement between the relevant Member and the Collector. Any Special Fees must be identified as such on any receipt issued under Condition 3.2 and in the appropriate invoice issued by the Collector under Condition 5.2.
- 3.10 Collectors are prohibited from deliberately amending collection dates for the purpose of financial gain, e.g. bringing forward a collection date to ensure it falls within the 60-day limit stated in Condition 5.3.
- 3.11 The Company or its authorised agents, reserve the right to request Collector copies of collection pads. If they cannot be produced by the Collector the Company may refuse payment or demand recovery of payments already made. The Company also has the right to audit any collections from Members pursuant to the Scheme and to request copies of relevant receipt pads to be made available for this purpose.
- 3.12 The Collector is responsible for arranging its own access to the internet and is solely responsible for any telephone costs and/or charges made by any internet service provider in connection with the provision of the Services and compliance with these Conditions. The Company do not guarantee speed, resolution or access to the services provided via the internet.
- 3.13 The Company will collect payments on behalf of the Collectors from Members and pay the Collector's undisputed invoices in due course.
- 3.14 Collections due for payment are subject to cut-off times, details will be communicated to the Collector via email.
- 4 MEETINGS AND REPORTS**
- 4.1 The Collector shall attend all meetings arranged by the Company for the discussion of matters arising from or in connection with the Collector's performance of the Services, this Contract and/or the Scheme.
- 4.2 Without prejudice to the submission of reports and/or other documents identified in this Contract, the Collector shall at its own cost and expense render any additional reports as to the progress of the Services at such time or times, and in such form as the Company may reasonably require. The Collector hereby assigns copyright and all other intellectual property rights in all such reports and documents to the Company.
- 4.3 All data required to be submitted to the Company under these Conditions (including without limitation under Condition 5.2) shall be sent to the Company on-line in such format and in such manner as the Company may notify to the Collector from time to time.
- 5 CHARGES**
- 5.1 The Charges payable to the Collector shall be as submitted by the Collector and accepted by the Company from time to time and shall, subject to the provisions below, be fixed for the Contract Term. Charges are exclusive of VAT which shall (where applicable) be charged in addition. The Collector will be given the option to review and, if necessary, alter its Charges at intervals notified to it by the Company from time to time during the Contract Term..
- 5.2 Unless otherwise agreed between the Parties, the Collector shall input and submit to the Company, on the online electronic self-billing system, details of the Services performed by or on behalf of the Collector during the previous Month and any Special Fees, where relevant. The Collector shall provide full details of the Services it has provided during that Month, including the details of Members as well as collection points nominated by Members from time to time served by the Collector and those species, categories and quantities of Fallen Stock collected by or on behalf of the Collector during that Month. The Company's system will automatically produce an invoice in arrears and monthly billing statement setting out the Charges due and owing to the Collector in respect of the Services performed during the previous month.
- 5.3 All collections must be entered onto the Company's online invoicing/billing system by the Collector no later than 60 days after the collection is made. Failing to respond within the prescribed timescale will lead to non-payment for

- the collections associated with the statement concerned.
- 5.4 If so requested by the Company, the Collector shall submit with each invoice all such records and information as the Company may reasonably require including, but not limited to, a full breakdown of any expenses incurred, invoices paid and receipts countersigned under Condition 3.2.
- 5.5 In consideration of the Collector's satisfactory provision of the Services and subject to this Condition 5, the Company shall, within 30 business days after the Collector's invoice for the Services has been received by the Company, pay to the Collector all sums due under that invoice which are not in dispute.
- 5.6 If the Collector has incurred any pre-agreed Special Fees under Condition 3.9, the Company will also pay those pre-agreed Special Fees, provided that they are not disputed and have been separately identified on the receipt and invoice issued by the Collector, as set out in Condition 3.9. The Company reserves the right to refuse to pay Special Fees where, in its sole discretion, it believes it is not appropriate to do so and in such circumstances will inform the Collector and the Member accordingly. In those circumstances, the Collector is under an obligation to obtain payment of those Special Fees directly from the Member concerned.
- 5.7 Where the Collector has sub-contracted performance of part of the Services to an Approved Person it shall promptly pay to that Approved Person, when due, the proper costs and charges incurred.
- 5.8 If the Company notifies the Collector by email that a particular Member is suspended, expelled or is no longer a Member of the Scheme, the Company shall have no liability for any Charges the Collector may incur with that Member for any Services provided after the date of the emailed notification.
- 5.9 The Company shall in no way be liable in connection with these Conditions or the Scheme to the Collector for any sum or sums other than the Charges properly due and payable and (subject to Condition 5.6) any Special Fees. A dispute as to payment may originate from a Member or from the Company but any Charges or Special Fees, which are the subject of a dispute, shall not be paid until such dispute is resolved.
- 5.10 Any dispute as to Charges (other than Charges in respect of which a Member has properly refused to countersign a receipt and/or where the Company has made a decision under Condition 3.3), between the Company and the Collector, which cannot be resolved shall be referred to dispute resolution under Condition 9. In the event that any Charge is disputed, the Collector shall be permitted to submit an amended invoice omitting the disputed sum from the invoiced amount (together with a credit note if applicable) in order to secure payment of any sum under Condition 5.5.
- 5.11 The Collector is responsible for checking the amount of any payment received is correct as soon as possible after receipt. If the Collector believes, acting reasonably, that any details are incorrect, they should contact the Company on 01335 320024 immediately.
- 6 ADMINISTRATION LEVY**
- 6.1 To cover Scheme administration and financial costs, the Collector agrees to and shall pay to the Company a monthly percentage levy, notified as applicable from time to time by the Company to the Collector, for each collection carried out under the Scheme. This levy is exclusive of VAT, which shall (where applicable) be charged in addition.
- 6.2 Any payment due under this Condition 6 from the Collector to the Company the Collector hereby authorises the Company to deduct from all monies due and owing to the Collector as Charges in respect of the Services performed by or on behalf of the Collector during the Monthly invoicing periods including, without limitation, any Special Fees payable, and will be based on the percentage rate in force at that time as notified by the Company to the Collector.
- 6.3 The Company may review and vary the percentage rate by notice to the Collector to reflect any variation in costs incurred by the Company in the provision of the Services at anytime.
- 7 ONLINE SECURITY**
- 7.1 The Company will use all reasonable endeavours to monitor and maintain the security of the online services which it makes available to the Collector but due to the nature of the internet the Company cannot guarantee absolute security at all times.
- 7.2 The Collector must exit the relevant web pages on which it may access services provided by the Company when leaving its computer terminal unattended and must not allow any unauthorised personnel to access the relevant web pages or generally communicate billing data to the Company on its behalf.
- 7.3 The Collector user name and password are used to gain access to the online services which the Company makes available in connection with the provision of the Services and the associated administration of the Scheme. These security details must NOT be kept together. The Collector's security details must be kept in a safe place at all times. The Collector must NEVER write down, disclose or reveal the security details to anyone (save for those officers and employees strictly needing to know the same) or keep them where they may be discovered.
- 7.4 If a Collector believes that someone knows or has found or discovered their security details the Company must be notified immediately on 01335 320024. The liability of the Collector in respect of unauthorised access by a third party using the Collector's user name and password will cease as soon as notification is received by the Company (or at 8.30am on the next business day if notification is received after 5pm or on a day which is not a business day), unless the unauthorised use of user name and the password is due to the fraud or negligence of the Collector in which case the Collector may be liable for all losses subsequently incurred by the Company and/or any of its Members.
- 7.5 The Collector is responsible for the security of any data which is

- downloaded from the online services which the Company makes available to the Collector onto any hardware or software being used by the Collector.
- 7.6 The Company reserves the right to suspend its online services if:
- (a) incorrect security details are used to try to access the online services which the Company makes available to the Collector;
  - (b) the Company suspect an unauthorised person is attempting to access the online services which the Company makes available to the Collector; and/or
  - (c) in the Company's discretion, there is reasonable justification for doing so.
- 7.7 The Company will endeavour to act on instructions promptly once received from a Collector, however, the Company may refuse to act upon any instructions received if:
- (a) the Company have reasonable grounds for believing that the Collector did not send the instructions; and/or
  - (b) the instructions are not clear.
- 7.8 From time to time the online services which the Company makes available to the Collector may be closed down for repair, maintenance work or upgrade or where it is necessary to protect the interests of the Collector, the Company or any Member. In such circumstances, the Company will, where reasonably practicable, give as much notice as possible via email and also on the website [www.nfsc.co.uk](http://www.nfsc.co.uk).
- 7.9 The Company reserves the right to reject the security code the Collector has chosen if the Company believe it is inappropriate for the online services which the Company makes available to the Collector.
- 8 LIABILITY**
- 8.1 The Company will not be liable for any liability, loss or damage which the Collector may incur as a result of providing any Services pursuant to the Scheme (including, without limitation, the online services which the Company makes available to the Collector) except where such loss or damage was caused by gross negligence, wilful default or fraud by the Company or its employees.
- 8.2 The Collector shall be liable for any loss suffered by the Company as a result of any breach of these Conditions by the Collector or any fraud or negligence (including, without limitation, the online services which the Company makes available to the Collector) by the Collector or any of its employees, agents or sub-contractors. In the case of alleged fraud on the Collector's account, the Collector will be required to co-operate with the police or Trading Standards in any investigation, as the case may be.
- 8.3 Due to the nature of the internet and electronic communication there is a risk of errors or interruption. The Company is not liable:
- (a) in the event of any error or interruption in communication; or
  - (b) for any losses or delays in the transmission of instructions to the Company caused by any internet service provider or by software failure; or
  - (c) for any breaches of security of the service arising beyond the Company's reasonable control; or
  - (d) for any direct, indirect or consequential loss the Collector may suffer as a result of using the internet to access the online services which the Company makes available to the Collector.
- 8.4 The Company shall not be liable for any damages, losses, claims or liabilities a Collector may suffer or incur as a result of:
- (a) any error or inaccuracy in the instructions the Collector gives to the Company;
  - (b) any instructions given to the Company by the Collector being incomplete;
  - (c) the Collector allowing someone else to use or obtain (with or without its permission), the Collector's security details.
- 9 UNSATISFACTORY PERFORMANCE**
- 9.1 Where in the reasonable opinion of the Company the Collector has failed to perform the whole or any part of the Services in accordance with Good Industry Practice and/or this Contract, the Company may give the Collector a notice specifying:
- (a) the way in which its performance falls short of the requirements of this Contract or is otherwise unsatisfactory; and
  - (b) any rectification period on the terms referred to in Condition 9.2.
- 9.2 Where the Collector has been notified of a performance failure in accordance with Condition 9.1, the Company may request from the Collector that, at the Collector's own cost and expense and as specified by the Company, the Collector re-schedules and performs the affected Services to the Company's satisfaction within such period as may be specified by the Company in the notice, including, where necessary, the correction or re-execution of any such Services already carried out and/or withhold or reduce payments to the Collector, in such amount as the Company, in its sole discretion, deems appropriate in each particular case.
- 9.3 In exercising any discretion under this Condition 9, the Company shall at all times act reasonably in all the circumstances.
- 10 INVESTIGATION, AUDIT, SUSPENSION, TERMINATION (EXPULSION) AND LIABILITY**
- 10.1 The Company and/or a Competent Authority (or a representative or nominee of either or both such persons) shall be entitled to investigate the Collector's performance of the Services in order to ensure that the Collector is at all times compliant with these Conditions. The Collector shall as a condition of its ongoing participation in the Scheme provide the Company (or any representative or nominee of the Company) whenever requested with ready access to such information, records and documentation (including that stored in electro-magnetic, digital or electronic format), personnel and premises of the Collector and/or any agent, contractor, Approved Person or sub-contractor engaged in connection with the provision of the Services as is

reasonably necessary to assist with any investigation conducted by the Company and/or any Competent Authority in connection with this Condition 10.1.

10.2 The Collector accepts that for the purposes of:

(a) the examination and certification of the Company's accounts in connection with the Scheme; or

(b) any examination pursuant to the National Audit Act 1983 (or to equivalent legislation applying to Wales, Scotland and Northern Ireland) of the economy, efficiency and effectiveness with which the relevant Competent Authorities have used their resources;

the Auditor may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Collector and may require the Collector to produce such oral or written explanations, as the Auditor considers necessary. The carrying out of an examination under Section 6(3) (d) of the National Audit Act 1983 or any re-enactment thereof in relation to the Collector is not a function exercisable under the Contract.

10.3 Other than in exceptional circumstances, the Company shall provide the Collector with reasonable advance notice of the Company seeking to exercise its entitlement provided in Condition 10.1 and shall in carrying out any investigation in connection with that provision use reasonable endeavours to avoid any unnecessary disruption to any affected business or businesses of the Collector.

10.4 Without prejudice to any other power of termination provided in these Conditions, the Company may terminate the Collector's ability to provide Services with or without notice (and thereby expel the Collector from the Scheme) at any time forthwith for any of the following reasons:

(a) a material breach by the Collector of any of the Conditions;

(b) any breach by the Collector of any warranty and undertaking provided in Condition 2.3;

(c) any failure by the Collector to comply with a notice given following unsatisfactory performance of the Collector under Condition 9.1;

(d) any refusal to grant access to the Company or a representative or nominee or the Auditor for the purposes of investigation or audit under Conditions 10.1 or 10.2;

(e) the Collector ceases, or proposes to cease to carry on its business;

(f) an Insolvency Event occurs in relation to the Collector;

(g) a change of control (as defined in Condition 18.2) occurs in relation to the Collector;

(h) the Collector is guilty of abusive behaviour towards the Company's administration staff or towards any Member

10.5 Furthermore, without prejudice to its rights at Law from time to time, the Company may either terminate the Services with or without notice (and thereby expel the Collector from the Scheme) or suspend the Collector from the Scheme forthwith for any of the following reasons:

(a) any act, omission and/or default committed or attempted by or on behalf of the Collector in order to misuse, abuse or defraud the Scheme, the Company and/or any Member in connection with the provision of any Services under or in connection with the Scheme; and/or

(b) any act, omission and/or default committed or attempted by or on behalf of the Collector which causes or is likely to cause a material adverse effect at any time on the marketability of the Scheme to prospective Scheme Members and/or the maintenance of the Scheme.

10.6 The Company shall notify all Members served by the Collector in its Area of any exercise by the Company of its power provided in this Condition 10 to suspend

or expel the Collector from the Scheme. In the event that the Company:

(a) elects to suspend the Collector from the Scheme, the Company shall not be liable to the Collector and/or any of its servants, officers, agents, employees, contractors, Approved Persons and sub-contractors for any Charges arising from any Services performed during the period of that suspension, which shall cease only when the Company elects to reinstate the Collector to the Scheme and then solely in accordance with these Conditions; or

(b) elects to terminate the Services and expel the Collector from the Scheme, the Company shall not be liable to the Collector and/or any of its servants, officers, agents, employees, contractors, Approved Persons and sub-contractors for any Charges in connection with any Services performed on and after the Termination Date.

10.7 Any decision to reinstate the Collector to the Scheme after a suspension or expulsion hereunder shall be at the sole discretion of the Company.

10.8 Without prejudice to Condition 10.6, in the event that the Company exercises any of its powers referred to in this Condition 10 or any other power of termination, expulsion or suspension under the Contract, then, subject to Condition 10.9 the Company shall not be liable to the Collector for any losses (including, for the avoidance of doubt, any loss of revenue), costs, expenses, claims, damages and/or liabilities, of any kind, which the Collector suffers or might suffer arising out of or in connection with such expulsion or termination.

10.9 Nothing in this Contract shall exclude or restrict the Company's liability to the Collector under or in connection with this Contract for fraud or for death and/or personal injury arising from the Company's negligence.



- 10.10 Subject to Condition 10.9, the Company shall in no way be liable to the Collector and/or any of its servants, officers, agents, employees, contractors, Approved Persons and sub-contractors under or in connection with this Contract whether for breach of contract, under indemnity, in tort (including breach of statutory duty) or otherwise (whether or not involving a negligent act or omission) for any:
- (a) any direct losses to the Collector in excess of the administration levy payable under condition 6 over any twelve (12) consecutive Months; and / or
  - (b) any loss of profit nor for any indirect or consequential losses including, without limitation, any loss of profit, loss of goodwill, loss of contract or loss of expectation.
- 10.11 The Collector may terminate its appointment to provide Services and this Contract at any time by notifying the Company in writing at, NFSCo CIC, Sallyfield Lane, Stanton, Ashbourne, Derbyshire DE6 2DA. The notification will only be effective once it is received by the Company and all outstanding sums are paid by the Collector to the Company. The Collector will then cease to be eligible to provide Services as part of the Scheme.
- 10.12 The Company reserves the right to vary these Conditions at any time. Any variation will only take place after the Company has given the Collector at least 30 days prior written notice of any changes before they take effect. The Company will provide 30 days notice of the changes to the Collector by email and/or post. Notification shall be deemed to take place on the first day notification is emailed to the Collector.
- 10.13 Where the Company becomes aware of any information, which may or is likely to assist any Competent Authority with regard to the Collector's compliance with any Law from time to time, the Company may disclose that information to that Competent Authority without obtaining the Collector's consent.

- 11.1 The Company shall in addition to any other provision of this Contract be permitted to terminate the Collector's appointment to provide Services at any time by giving to the Collector written notice at which time the Collector's appointment shall terminate without prejudice to the rights of the Parties accrued prior to the date of termination.

## 12 DISPUTES

- 12.1 Subject to Condition 12.2, the Parties shall use reasonable endeavours to discuss and resolve any disputes arising out of or in connection with these Conditions with reference to any receipts and/or other relevant document issued by the Collector and/or any Member in connection with the Services. The Collector shall make every effort to resolve any dispute directly with the Company or with the relevant Member as soon as reasonably practicable after such dispute has arisen. If the Parties cannot resolve the dispute within 28 (twenty eight) days of the dispute arising:
- (a) any of the Parties to the dispute may propose to the others in writing that structured negotiations be entered into with the assistance of a mediator (the "Mediator") before resorting to litigation;
  - (b) within 14 (fourteen) days from the date of the proposal to appoint a Mediator any of the Parties to the dispute may apply to the Centre for Effective Dispute Resolution ("CEDR") in London to appoint the Mediator;
  - (c) the exchange of any relevant information and the structure to be adopted for the negotiation to be held in London shall be in accordance with the CEDR model mediation procedure;
  - (d) if the Parties to the dispute accept the Mediator's recommendations or otherwise reach agreement on the resolution of the dispute, that agreement shall be reduced to writing and, once it is signed by their duly authorised

representatives, shall be final and binding on the Parties;

- (e) if the Parties fail to reach agreement in the structured negotiations within 30 (thirty) days of the Mediator being appointed, any failure shall be without prejudice to the right of any Party subsequently to refer any dispute or difference to litigation, but the Parties agree that, before resorting to litigation, structured negotiations in accordance with this Condition shall have taken place; and
- (f) other than as agreed in accordance with Condition 12.1(e) nothing contained in this Condition shall restrict either Party's freedom to commence legal proceedings to preserve any legal right or remedy or protect any proprietary or trade secret right.

- 12.2 Condition 12.1 shall not apply to those matters referred to in Conditions 2.6, 3.3, 5.9, 10.7, 12.3 and 13 in respect of which the decision of the Company is final and conclusive or at the sole discretion of the Company.
- 12.3 If a Collector is dissatisfied with the service they have received from the Company they should contact the Company on 01335 320024 to discuss its concerns as soon as reasonably practicable.
- 12.4 The Company will always try to resolve any complaint immediately. However, if that is not possible the Company will acknowledge a complaint within 5 (five) business days of notification of the same. If a Collector's complaint is not resolved to the reasonable satisfaction of the Collector, the Collector has the right to refer the matter to the Board of the Company, full details of which are available from the Company on 01335 320024. The decision of the Board of the Company will be binding.

## 13 DISCLOSURE OF INFORMATION

- 13.1 Under the Government's Code of Practice on Access to Government Information (the "Code") and the Freedom of

Information Act 2000 ("FOIA"), the Company reserves the right to disclose any information about these Conditions or the operation of the Scheme when requested to do so, unless otherwise agreed in writing with the Collector. The Collector shall co-operate with the Company to ensure that it is able to meet its obligations provided in the Code and FOIA and acknowledges that the Company may be forced to disclose such information.

13.2 Unless agreed in writing with the Company, the Collector shall keep secret and not disclose these Conditions or any information of a confidential nature obtained by it in connection with the Company, the Scheme or acquired during the course of the provision of Services to any Member of the Scheme, unless that information:

- (a) is in or enters the public domain otherwise than by a breach of an obligation of confidentiality;
- (b) is or becomes known from other sources without breach of any restriction on disclosure;
- (c) is strictly required for any proceedings arising under this Contract, and/or
- (d) is required to be disclosed by the Law from time to time or for the purpose of any judicial proceedings.

13.3 The decision of the Company regarding any dispute arising from this Condition 13 shall be final and conclusive.

#### **14 NO AGENCY, EMPLOYMENT, JOINT VENTURE OR PARTNERSHIP**

14.1 The Parties are not, nor shall they be deemed to be, at any time carrying on business in common in connection with these Conditions with a view of profit and nothing in these Conditions shall be deemed to create or constitute a partnership, a joint venture or agreement of employment between the Parties nor constitute either Party the agent of the other.

14.2 Neither Party shall act or describe itself as the agent, employee or partner of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf, including, but not limited to, the making

of any representation or warranty, pledging the others credit and the exercise of any right or power.

#### **15 ENTIRE AGREEMENT**

15.1 This Contract sets out the entire agreement between the Parties in connection with the subject matter of this Contract and supersedes all prior oral or written agreements, arrangements or understandings between them in connection therewith.

15.2 The Parties acknowledge that they have not entered into this Contract in reliance upon any warranty, representation, covenant, undertaking, agreement term or condition which is not set out or deemed to be set out in this Contract.

15.3 Without prejudice to Conditions 15.1 and 15.2, the Parties irrevocably and unconditionally waive any right they may have to claim damages and/or to rescind this Contract for any misrepresentation whether innocent or negligent, whether in tort, under the Misrepresentation Act 1967 or otherwise or for any breach of any warranty not contained in this Contract, unless such misrepresentation or warranty was made or given fraudulently.

#### **16 NOTICES**

16.1 Each notice or other communication to be given under this Contract shall be given in writing in English and, unless otherwise provided, shall be made by hand or letter. For the avoidance of doubt, notice shall not be validly served by e-mail (unless expressly provided for within these Conditions).

16.2 Any notice or other communication to be given by one Party to another under this Contract shall, unless one Party has by no less than 5 (five) business days notice to the other Party specified another address be given to that other Party's address specified in writing at the outset of the Collector's appointment, in the Award Letter.

16.3 (a) Any notice or other communication given by any Party shall be deemed to have been received:

- (i) in the case of a notice given by hand, at the time of day of actual delivery (if between the

hours of 9:00 am and 5:00 pm on a business day); and

- (ii) if posted, by 10 a.m. on the second business day following the day on which it was despatched by first class mail postage prepaid, provided that a notice given in accordance with the above but received on a day which is not a business day or after normal business hours in the place of receipt shall be deemed to have been received on the next business day.

(b) Any notice or other communication given to the named Party shall be deemed to have been given only on actual receipt.

#### **17 DATA PROTECTION & GDPR**

17.1 Without prejudice to the Collector's obligations under Condition 2.1, the Collector shall at all times observe its obligations under the Data Protection Act 2018 (DPA 2018) & General Data Protection Regulation (GDPR 2018) and will not transfer personal data outside the European Union without the Company's prior written consent.

17.2 The Collector hereby consents to the Company's processing of any personal data relating to the Collector in connection with this Contract, the Services and/or the Scheme.

17.3 The Data Protection Act 2018 (DPA 2018) & General Data Protection Regulation (GDPR 2018) a Collector will be entitled to receive details of the information that the Company holds about them, this is called a Subject Access Request (SAR). If the Collector wishes to request access to such information, they must write to NFSCO CIC, Sallyfield Lane, Stanton, Ashbourne, Derbyshire DE6 2DA or email [collector@nfscoco.uk](mailto:collector@nfscoco.uk) stating what schemes or transactions they require details for and the period of time concerned. NFSCO has 1 month to

respond to any Subject Access Requests with a possibility to extend this period for particularly complex requests.

17.4 Telephone calls and electronic messages to the Company may be recorded for your security and the purpose of staff training, to ensure the Company carries out the Collector's instructions correctly and to maintain and improve the Company's service standards. The information we hold and use may include recordings of your voice.

## **18 ASSIGNMENT AND NOVATION**

18.1 The Collector may not assign, charge or make a trust of any of its rights or the benefit of all or part of this Contract or transfer, assign, delegate or sub-contract any of its duties or obligations as a registered Collector without the prior written consent of the Company.

18.2 If the Collector is a body corporate and proposes to be or is the subject of a change of control then it shall provide notice in writing to the Company together with such other information as the Company may reasonably request. For the purposes of this Condition 18.2 it will be a change of control if the Collector becomes controlled (as defined by section 840 of the Income and Corporation Taxes Act 1988) by any person(s) who did not control it on the date when the Award Letter was first issued to the Collector. Following a change of control, the Company may elect to terminate the Collector's ability to provide Services in accordance with Condition 10.4.

18.3 The Collector shall ensure any sub-contractor engaged in connection with this Contract and the Scheme complies with the terms of this Contract insofar as they are applicable and the Collector shall provide to the Company, at the Company's request, copies of any sub-contract, under the terms of which services are provided in connection with the Services.

18.4 The Company may at any time assign, charge, transfer or deal with any other manner with this Contract or any of its rights under it or transfer, delegate or

sub-contract any of its duties or obligations under it.

## **19 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

19.1 For the purpose of section 1(2) of the Contract (Rights of Third Parties) Act 1999 ("1999 Act") the Parties acknowledge that they do not intend any term of this Contract to be enforced by any third party except that those rights provided in Condition 10.1 may be enforced by a Competent Authority in accordance with the 1999 Act and the Parties agree that:

- (a) they may amend or vary any or all of the terms of this Contract or terminate this Contract without the consent of either that Competent Authority or that future service provider; and
- (b) any third party right which exists or is available independently of the 1999 Act is preserved.

## **20 FURTHER ACTION**

20.1 Except to the extent specified in this Contract, each Party agrees at its own cost and expense to do or procure to be done all such further acts and execute or procure the execution of all such documents as may from time to time be reasonably required to give effect to the spirit and intention of this Contract.

## **21 ENGLISH LAW**

21.1 These Conditions will be governed by and will be construed in accordance with the laws of England and Wales and the Courts of England and Wales will have exclusive jurisdiction.